

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Larry E. Sherfey,	)	
	)	Civil No. 2:10-CV-0317-DCN
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER AND OPINION</b>
Big Red, Inc.,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on plaintiff's motion to remand. Plaintiff filed a complaint in state court alleging negligence and willful conduct on the part of defendants for creating, and failing to warn against, the alleged dangerous and/or defective condition of a container handler. Defendants subsequently removed the case to federal court pursuant to 28 U.S.C. § 1332(a). Plaintiff is a citizen and resident of the State of Tennessee, and defendant is a corporation organized under the laws of South Carolina, with its principal place of business in North Charleston, South Carolina. Defendant did not file a brief in opposition to plaintiff's motion.

Plaintiff correctly asserts that 28 U.S.C. § 1441(b) prevents defendant from removing the case to federal court. In an action based on diversity jurisdiction, "such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). Defendant Big Red, Inc., admits it is a citizen of South Carolina; therefore, defendant is precluded from removing the case to federal court.

For the foregoing reason, the court **GRANTS** plaintiff's motion to remand.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

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**DAVID C. NORTON**  
**CHIEF UNITED STATES DISTRICT JUDGE**

**March 31, 2010**  
**Charleston, South Carolina**